Supreme Court, U.S.
FILED
JUN 10 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19.....

NO. 79-1944

J. TRUETT PAYNE COMPANY, INC.,
a corporation,

Petitioner

vs.

CHRYSLER MOTORS CORPORATION,
a corporation,

Respondent.

APPENDIX

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

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TABLE OF CONTENTS

	Page
Fifth Circuit Opinion	1
Fifth Circuit Denial of Rehearing	7
District Court Judgment	8
Charts	10
15 U.S.C. §13	28
15 U.S.C. §15	29

INTRODUCTION

The abbreviation used throughout the Charts, pages 10 through 27, are set forth below:

C/L	- Car Line
CEN.	- Central Motors
Diff. and Difference	- Price Differential to J. Truett Payne
El.	- Eligible
JTP	- J. Truett Payne
Obj.	- Objective
P.U.	- Per Unit
Pur.	- Purchase
Reb.	- Rebate
ROE.	- Roebuck Chrysler-Plymouth
VEST.	- Vestavia Chrysler-Plymouth
W/S	- Wholesale

CHRYSLER CREDIT CORPORATION, a corporation, Plaintiff,

v.

J. TRUETT PAYNE, INC., etc., et al., Defendants-Third Party Plaintiffs-Appellees,

v.

CHRYSLER MOTORS CORPORATION, a corporation, Third Party Defendant-Additional Party Defendant-Appellant.

No. 77-2331.

United States Court of Appeals, Fifth Circuit.

Dec. 7, 1979.

Former automobile dealership brought action against automobile wholesaler alleging price discrimination in violation of Robinson-Patman Act. The United States District Court for the Northern District of Alabama, Seybourne H. Lynne, J., entered judgment for dealership, and wholesaler appealed. The Court of Appeals, Frank M. Johnson, Jr., Circuit Judge, held that since dealership failed to introduce substantial evidence of injury attributable to alleged discriminatory incentive programs of wholesaler, much less substantial evidence of amount of such injury, dealership failed to establish case entitling it to recover treble damages.

Reversed and remanded with directions.

1. Monopolies ⇐28(9)

In order to recover treble damages under provision of Clayton Act, plaintiff must prove a violation of antitrust laws, cognizable injury attributable to violation, and at least the approximate amount of damage. Clayton Act, § 4, 15 U.S.C.A. § 15.

2. Trade Regulation ⇐929

Former automobile dealership failed to introduce substantial evidence of injury attributable to alleged discriminatory incentive programs of automobile wholesaler, much less substantial evidence of amount of such injury, in action against automobile wholesaler for price discrimination in violation of Robinson-Patman Act. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

3. Monopolies ⇐28(7.6)

Conclusory statements by plaintiff, without evidentiary support, as to fact of damage caused by alleged antitrust violation are not sufficient to entitle plaintiff to recover treble damages under Clayton Act. Clayton Act, § 4, 15 U.S.C.A. § 15.

4. Trade Regulation ⇐929

Evidence of a slight decrease in market share roughly coincident with alleged violation of Robinson-Patman Act is not sufficient to entitle plaintiff to recover treble damages under Clayton Act. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a); Clayton Act, § 4, 15 U.S.C.A. § 15.

5. Trade Regulation ⇐929

Mere proof of alleged price discrimination in violation of Robinson-Patman Act is insufficient to establish injury by reason of antitrust violation entitling plaintiff to damages. Clayton Act, § 2(a) as amended by Robinson-Patman

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Price Discrimination Act, 15 U.S.C.A. § 13(a).

6. Monopolies ⇐28(9)

Antitrust laws do not provide a damages remedy for all losses traceable to conduct violating antitrust laws, only for losses that are part of anticompetitive effect of such conduct. Clayton Act, § 4, 15 U.S.C.A. § 15.

7. Trade Regulation ⇐913

Price discrimination which threatens competition but which has not caused any actual competitive injury may be held to violate Robinson-Patman Act even though it will not support an action for damages. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

8. Trade Regulation ⇐931

In order to recover damages for violation of Robinson-Patman Act, plaintiff must show more than just a threat of antitrust injury. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

9. Trade Regulation ⇐929

In antitrust action for alleged violation of Robinson-Patman Act, burden of proving amount of damages is less severe than burden of proving cognizable injury; however, plaintiff must put forth substantial evidence and burden is not satisfied by mere speculation or guesswork. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

10. Trade Regulation ⇐929

A price difference in violation of Robinson-Patman Act, without more, does not indicate amount of lost sales or profits for purposes of recovery of damages. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

11. Trade Regulation ⇐929

Self-serving or unsupported assumptions cannot sustain a calculation of going concern value in an action for price discrimination in violation of Robinson-Patman Act. Clayton Act, § 2(a) as amended by Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a).

Appeal from the United States District Court for the Northern District of Alabama.

Before GODBOLD, RONEY and FRANK M. JOHNSON, Jr., Circuit Judges.

FRANK M. JOHNSON, Jr., Circuit Judge:

This is an appeal from a treble damages judgment awarded against Chrysler Motors Corporation for price discrimination in violation of section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.[1]

1. Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. § 13(a), provides in part as follows:

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination . . . ."

From January 1970 through August 1974, the period at issue, Chrysler Motors was a wholly owned subsidiary of Chrysler Corporation, engaged in wholesaling Chrysler-Plymouth automobiles to retail dealerships throughout the country. J. Truett Payne, Inc., was one of four such dealerships in the Birmingham, Alabama, area.

Payne went out of business in May 1974. In September 1974, Chrysler Credit Corporation filed suit for the recovery of certain unrepaid loans. Part of Payne's response was the filing of this price discrimination claim against Chrysler Motors.

Payne alleged that as a result of certain discriminatory sales incentive programs conducted by Chrysler Motors among its dealerships in the Birmingham area, Payne had been forced to pay higher prices for Chrysler automobiles than had its competitors. Payne claimed that because of the higher prices it lost sales and profits, and was eventually forced out of business. Payne sought treble damages under section 4 of the Clayton Act.[2]

In defense, Chrysler Motors maintained that the sales incentive programs were available on a non-discriminatory basis to all Chrysler dealerships in the Birmingham area, including Payne, and denied that they had had an adverse effect on competition or that they had injured Payne.

The district judge severed trial of this Chrysler Motors issue from trial of the Chrysler Credit issues. Testimony was taken for six days. Chrysler's motions for a directed verdict made at the close of Payne's case and at the close of all the evidence were denied. The jury reached a verdict and award against Chrysler of $111,247.48 (Payne had asked for $180,000), which the court trebled. Chrysler's motion for judgment notwithstanding the verdict or for a new trial was denied, and Chrysler filed this appeal.

[1] It is well established that in order to recover treble damages under section 4 of the Clayton Act, a plaintiff most prove (1) a violation of the antitrust laws, (2) cognizable injury attributable to the violation, and (3) at least the approximate amount of the damage. *Larry R. George Sales Co. v. Cool Attic Corp.*, 587 F.2d 266, 270 (5th Cir. 1979); *Kestenbaum v. Falstaff Brewing Corp.*, 514 F.2d 690, 694 (5th Cir. 1975), *cert. denied*, 424 U.S. 943, 96 S.Ct. 1412, 47 L.Ed.2d 349 (1976); *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 20 (5th Cir.), *cert. dismissed*, 419 U.S. 987, 95 S.Ct. 246, 42 L.Ed.2d 260 (1974).

[2] We find it unnecessary to consider whether Payne proved that the Chrysler incentive programs violated the Robinson-Patman Act. Because Payne failed to introduce substantial evidence of injury attributable to the programs, much less substantial evidence of the amount of such injury, the district court

2. Section 4 of the Clayton Act, 15 U.S.C. § 15, provides as follows:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

erred in refusing Chrysler's motions for directed verdict and in denying Chrysler's motion for judgment notwithstanding the verdict.

I. Cognizable Injury

To show that Chrysler's incentive programs caused it to lose sales, Payne introduced the unsupported testimony of J. Truett Payne, its owner, that customers and salesmen had told him that the dealership was being undersold, and that some salesmen had quit as a result. Payne also introduced evidence showing that its share of retail Chrysler-Plymouth sales in the Birmingham area was 24% in 1970, 27% in 1971, 23% in 1972, and 25% in 1973. Payne contends that it was proper to infer that the 4% drop in 1972 was a result of the incentive program.[3]

To show lost profits by reason of the programs, Payne introduced only the unsupported testimony of Mr. Payne that he was forced to lower prices in order to meet competition and that for the same reason the dealership had to, or possibly had to, give greater allowances on used-car trade-ins.

In an effort to show that the programs forced the dealership out of business, Payne relied on merely conclusory statements to that effect by Mr. Payne and an expert witness.[4]

[3, 4] Under *Boeing Co. v. Shipman*, 411 F.2d 365, 373–77 (5th Cir. 1969) (en banc) (standard for directed verdict and judgment notwithstanding the verdict), this showing was clearly not such as to allow the case to go to the jury. In an antitrust action, as noted above, the plaintiff must show that the defendant's conduct materially contributed to his injury. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 114 n.9, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969). He must do so "as a matter of fact and with a fair degree of certainty." *Terrell v. Household Goods Carriers' Bureau*, *supra*, 494 F.2d at 20. Conclusory statements by the plaintiff, without evidentiary support, as to the fact of damage caused by the alleged antitrust violation are not sufficient. Evidence of a slight decrease in market share roughly coincident with the alleged violation is not sufficient either.[5] The plaintiff must put forth substantial evidence. If he fails to do so, the defendant is entitled to a directed verdict. *See, e. g., Comfort-Trane Air Conditioning Co. v. Trane Co.*, 592 F.2d 1373, 1383 (5th Cir. 1979); *Yoder Brothers, Inc. v. California-Florida Plant Corp.*, 537 F.2d 1347, 1371 (5th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S.Ct. 1108, 51 L.Ed.2d 540 (1977); *Foremost-McKesson v. Instrumentation Laboratory*, 527 F.2d 417, 418–20 (5th Cir.

3. Payne also contends that the 2% increase in 1973 was the result of a 1973 revision of the incentive programs that resulted in sales quotas more favorable toward Payne. While it is true that certain of the incentive programs were so revised, none of these types of programs operated in 1973. The 1973 increase cannot be attributed to their revision.

4. The expert prefaced his statement on the issue with the comment, "I really can't tell you without having, you know—it's a hypothetical question."

5. *Cf. Feminist Women's Health Center, Inc. v. Mohammad*, 586 F.2d 530, 547 (5th Cir. 1978), *cert. filed*, — U.S. ——, 100 S.Ct. ——, — L.Ed.2d —— (1979) (decrease in income, without more, does not establish fact of damage). In this case, as Mr. Payne himself testified, there was evidence that the material cause of the 4% decrease in market share Payne experienced in 1972 was the relocation of a competing Chrysler-Plymouth dealer into Payne's immediate sales area, and not the Chrysler incentive programs.

1976); *Shumate & Co. v. National Ass'n of Securities Dealers, Inc.*, 509 F.2d 147, 153 (5th Cir.), *cert. denied*, 423 U.S. 868, 96 S.Ct. 131, 46 L.Ed.2d 97 (1975).

[5, 6] Payne maintains on this appeal that in a section 2(a) case mere proof of the alleged price discrimination is sufficient to establish injury by reason of an antitrust violation entitling the plaintiff to damages. This Robinson-Patman "automatic damages" concept, as it has come to be called, has some precedential support. *See Fowler Manufacturing Co. v. Gorlick*, 415 F.2d 1248 (9th Cir. 1969), *cert. denied*, 396 U.S. 1012, 90 S.Ct. 571, 24 L.Ed.2d 503 (1970); *Elizabeth Arden Sales Corp. v. Gus Blass Co.*, 150 F.2d 988, 996 (8th Cir.), *cert. denied*, 326 U.S. 773, 66 S.Ct. 231, 90 L.Ed. 467 (1945). But we decline to follow it. As the Supreme Court ruled in *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489, 97 S.Ct. 690, 50 L.Ed.2d 701 (1977), the antitrust laws do not provide a damages remedy for all losses traceable to conduct violating the antitrust laws, only for losses that are part of the anticompetitive effect of such conduct. When a seller charges different prices to different purchasers, as alleged here, injury to competition does not necessarily result. Both the statute and the courts recognize this. 15 U.S.C. § 13(a). *See, e. g., United States v. United States Gypsum Co.*, 438 U.S. 422, 450, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978). Competition is harmed only to the extent that the favored purchaser, by use of the discriminatory price difference, actually draws sales or profits from his unfavored competitor. *See, e. g., Enterprise Industries, Inc. v. Texas Co.*, 240 F.2d 457 (2d Cir.), *cert. denied*, 353 U.S. 965, 77 S.Ct. 1049, 1 L.Ed.2d 914 (1957); *Uniroyal, Inc. v. Jetco Auto Service, Inc.*, 461 F.Supp. 350, 357–59 (S.D.N.Y.1978); *McCaskill v. Texaco, Inc.*, 351 F.Supp. 1332, 1341 (S.D. Ala.1972), *aff'd sub nom. Harrelson v. Texaco, Inc.*, 486 F.2d 1400 (5th Cir. 1973); Handler, *Changing Trends in Antitrust Doctrines*, 77 *Colum.L.Rev.* 979, 992–93 (1977). *See also Perkins v. Standard Oil Co.*, 395 U.S. 642, 648–49, 89 S.Ct. 1871, 23 L.Ed.2d 599 (1969) (implying that disfavored purchaser must show more than mere price difference to recover damages). As discussed above, there is no evidence, much less substantial evidence, that such was the case here.

[7, 8] Payne's reliance on *FTC v. Morton Salt Co.*, 334 U.S. 37, 68 S.Ct. 822, 92 L.Ed. 1196 (1948), and its progeny is misplaced. In *Morton Salt*, the Supreme Court held that a violation of Robinson-Patman Act § 2(a) may be inferred from a substantial price difference. 334 U.S. at 46–47, 68 S.Ct. 822. But the showing necessary to establish a section 2(a) violation is not the same as the showing necessary to support a private action for damages. The Robinson-Patman Act is an incipiency statute.[6] Price discrimination which threatens competition but which has not caused any actual competitive injury may be held to violate the statute even though it will not support an action for damages. *See* Areeda, *Antitrust Violations Without Damage Recoveries*, 89 *Harv.L.Rev.* 1127, 1127–28 (1976). *See also Gottesman v. General Motors Corp.*, 436 F.2d 1205, 1210 (2d Cir.), *cert. denied*, 403 U.S. 911, 91 S.Ct. 2208, 29 L.Ed.2d 689 (1971) (private inju-

6. Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. § 13(a), proscribes price discrimination "where the effect of such discrimination *may* be substantially to lessen competition . . . ." (Emphasis added).

ry does not necessarily accompany public injury). What *Morton Salt* found inferable from a substantial price difference was a threat to competition sufficient to violate the statute. 334 U.S. at 46–47, 68 S.Ct. 822. Even assuming that *Morton Salt* is still viable, it is of no help to Payne. In order to recover damages, Payne had to show more than just a threat of antitrust injury. As discussed above, it failed to do so.

II. Amount of Damage

Our conclusion that Chrysler was entitled to a directed verdict is buttressed by Payne's failure to adequately prove the amount of its alleged injury.

Payne relied on its calculation of the alleged price discrimination to establish the amount of its alleged lost sales and profits. There is no necessary correlation, however, and Payne failed to establish one.

To indicate the going concern value of the dealership at the time it was allegedly forced out of business, Payne relied on two alternative methods of calculation. Under the first, Payne's expert assumed a good will value for the dealership of $52,000 in 1955 and appreciated this amount over 20 years at an annual rate of 4%. The expert testified that the $52,000 figure was not based on an examination of Payne's financial statements. It represented an unsupported estimate by Mr. Payne. The 4% rate was a rough average of the prevailing inflation and prime interest rates from 1955 until the time Payne folded. Under the second method, Payne's expert discounted projections of what the dealership's profits would have been if it had continued in business free of the incentive programs. The expert testified that he did not take into account local market changes or conditions. The projections were apparently nothing more than some of Payne's past earnings roughly adjusted according to Chrysler's performance nationwide or the performance of the automobile industry in general. If Chrysler or the industry had a good year it was assumed, without an explanation why, that Payne would have a good year also.

[9–11] As was the case with Payne's fact of damage evidence, this showing was clearly not such as to allow the case to go to the jury. In an antitrust damages action, as noted above, the plaintiff must establish the amount as well as the fact of damage. The burden of proving the amount of damage is less severe than the burden of proving the cognizable injury. *See, e. g., Story Parchment Co. v. Patterson Parchment Co.*, 282 U.S. 555, 562, 51 S.Ct. 248, 75 L.Ed. 544 (1931); *Terrell v. Household Goods Carriers' Bureau, supra*, 494 F.2d at 23–24. But the plaintiff must put forth substantial evidence. The burden is not satisfied by mere speculation or guess work. *See, e. g., Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264, 66 S.Ct. 815, 90 L.Ed. 1040 (1946); *Keener v. Sizzler Family Steak Houses*, 597 F.2d 453, 457 (5th Cir. 1979). Payne failed to meet this burden. A price difference without more does not indicate the amount of lost sales or profits. Self-serving and unsupported assumptions cannot sustain a calculation of going concern value. On this ground as well, Chrysler was entitled to a directed verdict. *See, e. g., Kestenbaum v. Falstaff Brewing Corp., supra*, 514 F.2d at 695; *Copper Liquor, Inc. v. Adolph Coors Co.*, 506 F.2d 934, 953–55 (5th Cir. 1975).

The district court is directed to enter judgment for Chrysler.

REVERSED AND REMANDED WITH DIRECTIONS.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 77-2331

U.S. COURT OF APPEALS
FILED
MAR 1 1980
GILBERT F. GANUCHEAU
CLERK

CHRYSLER CREDIT CORPORATION,
A Corporation,

Plaintiff,

versus

J. TRUETT PAYNE, INC., ETC., ET AL.

Defendants-Third Party Plaintiffs,
Appellees,

versus

CHRYSLER MOTORS CORPORATION,
A Corporation,

Third Party Defendant-Additional
Party Defendant-Appellant.

- - - - -

Appeal from the United States District Court for the
Northern District of Alabama

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion December 7, 1979, 5 Cir., 197_, _____F.2d_____).

(March 18, 1980)

Before GODBOLD, RONEY and FRANK M. JOHNSON, JR., Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Petition for Rehearing En Banc is also DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

CHRYSLER CREDIT CORPORATION, a corporation, Plaintiff, vs. J. TRUETT PAYNE CO., INC., a corporation; J. TRUETT PAYNE; BLANCHE P. PAYNE, Defendants and 3d Party Plaintiffs, CHRYSLER MOTORS CORPORATION, a corporation, 3d Party Defendant and Additional Party-Defendant	)	CIVIL ACTION NO. 74-L-891-S

FILED IN CLERK'S OFFICE
NORTHERN DISTRICT OF ALABAMA
APR 28 1977
JAMES E. VANDEGRIFT, CLERK
UNITED STATES DISTRICT COURT
BY:

O R D E R

On March 23, 1977, the jury to which this action was tried returned the following verdict:

"We, the jury, find for the defendants and third-party plaintiffs, J. Truett Payne Co., Inc., a corporation, J. Truett Payne, Blanche P. Payne, and against the third-party defendant, Chrysler Motors Corporation, a corporation, and assess their damages at $111,247.48."*

Pursuant to the provisions of 15 U.S.C. § 15, the single damages found by the jury are trebled.

Counsel stipulated that a reasonable attorney's fee was to be determined by the Court without the intervention of a jury. By separate order on application of J. Truett Payne Co., Inc., for attorneys' fees and reimbursement of out-of-pocket expenses, the Court has awarded to such applicant reasonable attorneys' fees in the amount of $40,000.

It is accordingly ORDERED, ADJUDGED and DECREED by the

* In the course of the pleadings in this action, the Court treated the third-party complaint against Chrysler Motors Corporation as a counterclaim against Chrysler Credit Corporation, the original plaintiff, to which counterclaim Chrysler Motors Corporation was added as an additional defendant therein.

Court that the defendants and third-party plaintiff, J. Truett Payne Co., Inc., a corporation, have and recover of the third-party defendant, Chrysler Motors Corporation, a corporation, the sum of THREE HUNDRED THIRTY-THREE THOUSAND, SEVEN HUNDRED FORTY-TWO AND 44/100 DOLLARS ($333,742.44), together with a reasonable attorney's fee in the amount of $40,000, and the costs of court incurred herein.

DONE this 28th day of April, 1977.

[redacted]
SENIOR JUDGE

W I N T E R W I N N E R S

11/11/70 - 1/31/71

Paid on Sales After W/S Obj. Attained

Pur. Obj.	C/L Group	JTP Sales	JTP Reb./P.U.	All Others Reb./P.U.	Diff.
JTP - 99	Val-Bar	17	0	30	510
Central - 63	Bel-Sat	13	0	45	585
Bessemer - 39	Ch-Imp	42	0	60	2,520
Roebuck - 54	Fury	17	0	45	765
	Fy W/O	15	0	60	900
					$ 5,280

W I N T E R W I N N E R S

11/11/70 - 12/31/70

(Floor Plan Rebates Portion - Paid on Purchase)

	Rebates P.U.	Purchases
JTP	$ -0-	72
Central	26.30	77
Bessemer	26.57	48
Roebuck	41.05	95

TOTAL REBATES JTP WOULD HAVE RECEIVED - $2,955.60

1971 BIG DOLLAR PAYOFF

1/1/71 - 4/30/71

Rebates paid on Sales

C/L Group	JTP Sales	JTP Reb./P.U.	ROE. Reb./P.U.	Difference
Val	51	28.43	54.03	$1,305.65
Others	163	107.98	35.59	(NEG.)

1971 BIG DOLLAR PAYOFF

1/1/71 - 3/31/71

(Floor Plan Rebates Portion-Paid on Purchases)

	Reb./P.U.	Purchases
JTP	$ 26.38	188
Central	.49	109
Bessemer	26.00	98
Roebuck	30.81	129

Total rebate JTP would have received - $5,792.88

JTP received $4,800.00. Difference - $ 992.28

S U M M E R S E L L O U T

3/1/71 - Fall, 1971

Paid on Sales After W/S Obj. Attained

C/L Group	JTP Sales	JTP Reb./P.U.	ROE. Reb./P.U.	Difference
Val	110	$ 9.41	$25.00	$ 1,715.00
Bar-Sat-Fy	103	11.65	60.00	4,980.00
Ch-Imp	61	13.20	70.00	3,465.00
				$10,160.00

W I N T E R P R O F I T D A Y S

11/21/71 - 1/31/72

Paid on Sales After W/S Obj. Attained.

C/L Group	JTP Sales	JTP Reb./P.U.	ROE+VEST Reb./P.U.	Difference
1972 Val-Bar	28	-0-	$ 35.00	$ 980.00
Sat	10	-0-	55.00	550.00
Fy-Ch-Imp	43	-0-	65.00	2,795.00
1971 Val-Bar	8	-0-	70.00	560.00
Sat	7	-0-	-0-	
Fy-Ch-Imp	15	-0-	130.00	1,950.00
				$6,835.00

S T O C K E L I M I N A T O R

8/11/71 - 1/31/72

Rebates Paid on All ~~Sales~~ Cars

C/L Group	JTP Sales	JTP Reb./P.U.	Hall Reb./P.U.	Difference
Compact	40	$ 68.75	$ 68.18	(NEG.)
Other	108	100.00	100.00	

C H R Y S L E R - P L Y M O U T H S E L L N O W

1/1/72 - 4/30/72

Paid on Sales After W/S Obj. Attained

C/L Group	JTP Sales	JTP Reb./P.U.	Vestavia Cen+Roe Reb./P.U.	Difference
Val-Bar	81	$17.72	$35.00	$1,400.00
Sat	30	14.67	55.00	1,210.00
Fy-Ch-Imp	72	52.22	65.00	920.00
				$ 3,530.00

CHRY/FY PROFIT PROGRAM

1/1/72 - 3/31/72

Rebate on Sales

JTP Sales	JTP Reb./P.U.	Bessemer Reb./P.U.	Diff.
70	$10.00	$82.76	$5,093.10

CASH IN WITH CHRYSLER

5/1/72 - 6/30/72

Rebate Paid on Sales

JTP Sales	JTP Reb./P.U.	Central Reb./P.U.	Diff.
31	$25.81	$80.43	$1,693.48

C L E A N - U P A N D C A S H I N

7/1/72 - Fall 1972

Rebate on Sales

JTP Sales	JTP Reb./P.U.	Central Reb./P.U.	Diff.
86	$39.53	$94.44	$4,722.22

1 9 7 2 S U M M E R S W E E P S T A K E S

4/1/72 - 7/31/72

Rebates on Sales

C/L Group	JTP Sales	JTP Reb./P.U.	Central Reb./P.U.	Diff.
Val-Bar	79	$ -0-	$ 42.02	$ 3,319.58
Sat	45	-0-	68.65	3,089.25
Fy-Ch-Imp	140	-0-	110.00	15,400.00
				$21,808.83
JTP received $9,689 stock rebate on 5%/P.U. but would have made $12,119.83 more under terms of rebate program.				- 9,689.00
				$12,119.83

C H R Y S L E R - P L Y M O U T H T R I P L E - P A Y

10/1/72 - 12/31/72

Rebates Paid on Sales

El. Units	JTP Reb./P.U.	Central Reb./P.U.	Difference
152	$6.91	$49.23	$6,432.64

F U R Y - C H R - I M P T W I N D E A L D O L L A R S

1/1/73 - 3/31/73

Rebate Paid on Sales

C/L Group	El. Units	JTP Reb./P.U.	ROE Reb./P.U.	Diff.
(3)	55	$3.636	$78.125	$4,096.88

CHRYSLER-PLYMOUTH EARLY

CLEAN-UP BONUS PROGRAM

6/1/73 - 1974 Model Day

JTP and Central opted for a Non-Discriminatory Program which gave them a 5% rebate on each 1973 Unit.

S U P E R E A R N I N G

1/1/74 - 3/31/74

Paid on Sales After W/S Obj. Attained

C/L Group	JTP Sales	JTP Reb./P.U.	Roe. Reb./P.U.	Diff.
Val	48	-0-	-0-	-0-
Sat	12	$ 35.00	$100.00	$ 780.00
Ch	19	50.00	150.00	1,900.00
'73 Ch	33	100.00	300.00	6,600.00
				$9,280.00

P R I M E R A T E O N E I G H T S

4/1/74 - 5/31/74

Paid on Sales After W/S Obj. Attained

C/L Group	JTP Sales	JTP Reb. Rec'd	Others Reb./P.U.	Diff.
Val	13	-0-	$ 50.00	$ 650.00
Sat	5	-0-	100.00	500.00
Ch	12	-0-	150.00	1,800.00
'73 Ch	19	-0-	200.00	3,800.00
				$6,750.00

"C" BODY BONUS
2/1/74 - 3/31/74
REBATES PAID ON SALES

El. Units	JTP Reb./P. U.	ROE. Reb./P. U.	Diff.
33	$163.64	$90.91	-----

§ 13. Discrimination in price, services, or facilities—Price; selection of customers

(a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

Burden of rebutting prima-facie case of discrimination

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

Payment or acceptance of commission, brokerage or other compensation

(c) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services

rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

Payment for services or facilities for processing or sale

(d) It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

Furnishing services or facilities for processing, handling, etc.

(e) It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

Knowingly inducing or receiving discriminatory price

(f) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Oct. 15, 1914, c. 323, § 2, 38 Stat. 730; June 19, 1936, c. 592, § 1, 49 Stat. 1526.

Section 4 of the Clayton Act, 15 U.S.C.A. §15:

§ 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.